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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 MARGARITA ERGUERA, an individual on) Case No.: 1:20-CV-01744-NONE-JLT
11 behalf of herself and others similarly situated,)
12 Plaintiffs,) SCHEDULING ORDER¹ (Fed. R. Civ. P. 16)
13 v.)
14 CMG CIT ACQUISITION, LLC, et al.,) Discovery Deadlines:
15 Defendants.) Non-Expert (Class Issues): 5/31/2022
16) Mid-Discovery Status Conference:
17) 9/30/2021 at 8:30 a.m.
18)
19 **I. Magistrate Judge Consent: Notice of Congested Docket and Court Policy of Trailing**
20 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the
21 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a
22 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case
23 set on the same date until a courtroom becomes available. The trial date will not be reset.
24 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
25 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize
26 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge
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28 ¹ Because of this Court's General Order 612 and because the Court finds the joint report adequately sets forth
the information for the scheduling order, the scheduling conference is VACATED.

² The Court will set a further scheduling conference after the motion for class certification is determined.

1 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of
2 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States
3 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

4 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United
5 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the
6 Local Rules, Appendix A, such reassessments will be random, and the parties will receive no advance
7 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
8 District of California.

9 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
10 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
11 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
12 whether they will consent to the jurisdiction of the Magistrate Judge.

13 **II. Discovery Plan and Cut-Off Date**

14 Discovery is now open for all non-expert discovery pertaining to the class certification motion
15 and to the merits, to the extent it overlaps with the class issues. All non-expert discovery related to the
16 motion for class certification **SHALL** be completed no later than **May 31, 2022**. Both sides may
17 conduct discovery as to the evidence relied upon in support of the motion and in opposition to the
18 motion for class certification.

19 The Court sets a mid-discovery status conference on **September 30, 2021**, at 8:30 a.m. at 510
20 19th Street, Bakersfield, California. Counsel **SHALL** file a Joint Mid-Discovery Status Conference
21 Report one week prior to the conference, and shall also lodge it via e-mail, in Word format, to
22 JLTorders@caed.uscourts.gov. The joint statement **SHALL** outline the status of the matter,
23 including all discovery that has been completed as well as any impediments to completing the
24 discovery within the deadlines set forth in this order. **Counsel SHALL discuss settlement and**
25 **certify that they have done so.** Counsel may appear via teleconference by dialing (888) 557-8511
26 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk
27 receives a written notice of the intent to appear telephonically no later than five court days before the
28 noticed hearing date.

1 **III. Pre-Trial Motion Schedule**

2 Non-dispositive motions are heard before the Honorable Jennifer L. Thurston, United States
3 Magistrate Judge, at the United States Courthouse in Bakersfield, California. For these hearings,
4 counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
5 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the
6 intent to appear telephonically no later than five court days before the noticed hearing date.

7 **No motion to amend or stipulation to amend the case schedule will be entertained unless**
8 **it is filed at least one week before the first deadline the parties wish to extend.** Likewise, no
9 written discovery motions shall be filed without the prior approval of the assigned Magistrate
10 Judge. A party with a discovery dispute must first confer with the opposing party in a good faith
11 effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the
12 moving party promptly shall seek a telephonic hearing with all involved parties and the Magistrate
13 Judge. It shall be the obligation of the moving party to arrange and originate the conference call to
14 the court. To schedule this telephonic hearing, the parties are ordered to contact the Courtroom
15 Deputy Clerk, Susan Hall, at (661) 326-6620 or via email at SHall@caed.uscourts.gov. At least three
16 days before the conference, counsel SHALL file informal letter briefs detailing their positions. The
17 briefs may not exceed 7 pages, excluding exhibits. **Counsel must comply with Local Rule 251 with**
18 **respect to discovery disputes or the motion will be denied without prejudice and dropped from**
19 **the Court's calendar.**

20 In scheduling such motions, the Magistrate Judge may grant applications for an order
21 shortening time pursuant to Local Rule 144(e). However, if counsel does not obtain an order
22 shortening time, the notice of motion *must* comply with Local Rule 251.

23 **IV. Motions for Summary Judgment or Summary Adjudication**

24 **At least 21 days before** filing a motion for summary judgment or motion for summary
25 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
26 to be raised in the motion.

27 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
28 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole

1 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
2 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
3 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

4 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
5 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
6 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
7 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
8 statement of undisputed facts.

9 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
10 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
11 **comply may result in the motion being stricken.**

12 **V. Motion for class certification**

13 The motion for class certification **SHALL** be filed no later than **October 15, 2021**.
14 Opposition to the motion **SHALL** be filed no later than **December 15, 2021**. During the interval
15 between the filing of the motion and the deadline for the opposition, the Defendant may conduct
16 discovery as to the evidence relied upon by Plaintiff for the motion for class certification.

17 Neither the motion nor the opposition **SHALL** exceed 30 pages, exclusive of evidence and
18 evidentiary objections, unless leave is granted by the Court prior to the filing. Any reply **SHALL** be
19 filed no later than **January 14, 2022**, and shall not exceed 15 pages, exclusive of evidentiary
20 objections. During the interval between the filing of the opposition and the deadline for the reply, the
21 Plaintiff may conduct discovery as to the evidence relied upon by Defendant for the opposition to the
22 motion for class certification.

23 Any objections to the evidence **SHALL** be filed at the same time as the opposition (for
24 Defendant) and the reply (for Plaintiff).³ A hard-copy, courtesy copy of all filings related to the
25 class motion **SHALL** be sent via overnight mail to the Chambers of Judge Thurston at the same
26 time the filing is submitted. All of the pages of evidence in the hard copy **SHALL** be numbered,

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³ No motions to strike evidence will be entertained. If the Court sustains an objection to a piece of evidence, the evidence will not be considered.

1 tabbed and indexed.

2 The hearing on the motion for class certification is set for **March 1, 2022** at 10:00 a.m.

3 **VI. Settlement Conference**

4 If the parties believe the matter is in a settlement posture, the parties may submit a joint written
5 request for a settlement conference, at which time a conference will be set with the Court.

6 **VII. Compliance with Federal Procedure**

7 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
8 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
9 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
10 handle its increasing case load and sanctions will be imposed for failure to follow both the Federal
11 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

12 **VIII. Effect of this Order**

13 The foregoing order represents the best estimate of the court and counsel as to the agenda most
14 suitable to dispose of this case. If the parties determine at any time that the schedule outlined in this
15 order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments
16 may be made, either by stipulation or by subsequent status conference.

17 **The dates set in this order are firm and will not be modified absent a showing of good
18 cause even if the request to modify is made by stipulation. Stipulations extending the deadlines
19 contained herein will not be considered unless they are accompanied by affidavits or declarations,
20 and where appropriate attached exhibits, which establish good cause for granting the relief
21 requested.**

22 Failure to comply with this order may result in the imposition of sanctions.

23
24 IT IS SO ORDERED.

25 Dated: March 5, 2021

26 /s/ Jennifer L. Thurston
27 UNITED STATES MAGISTRATE JUDGE
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